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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 352 (JSR)

5 JATIEK SMITH,

6 Defendant.

7 Bail Conference

8  
9 New York, N.Y.  
November 4, 2022  
3:40 p.m.

10  
11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
Southern District of New York

17 BY: ADAM S. HOBSON

MARY E. BRACEWELL

18 ELIZABETH ESPINOSA

Assistant United States Attorneys

19 THE VITALIANO LAW FIRM, PLLC

20 Attorney for Defendant

21 BY: MICHAEL VITALIANO

22 Also Present:

23 Francesca Tessier-Miller, Pretrial Services

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1 (Case called)

2 MR. HOBSON: Good afternoon, your Honor. Adam Hobson,  
3 Mollie Bracewell, Rushmi Bhaskaran, Elizabeth Espinosa for the  
4 government. Also with us is Pretrial Officer Francesca  
5 Tessier-Miller.

6 MR. VITALIANO: Good afternoon, your Honor. Michael  
7 Vitaliano for Jatiek Smith.

8 THE COURT: Good afternoon.

9 So we're here on a reconsideration of the prior  
10 detention of the defendant.

11 Let me state at the outset that I always welcome  
12 reconsideration of bail matters because it's a Constitutional  
13 right, and one of great importance. So I'm glad, in that  
14 sense, that this motion was made.

15 On the other hand, just to frame the situation, I  
16 don't see much difference between the arguments that were made  
17 previously and the arguments that are being made now. There's  
18 a suggestion that some of the conversations in which the  
19 government relied have a more neutral explanation or even a  
20 positive explanation, but on the other hand, that was just one  
21 of many factors that the Court to account of. So I flagged  
22 that in advance so that I can have defense counsel respond to  
23 that.

24 So let me hear first from defense counsel.

25 MR. VITALIANO: Judge, I think a lot has changed since

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1 Mr. Smith's initial presentment.

2 Number one, a lot of the conversations in which the  
3 government relies on are neutral. In fact, Mr. Smith speaks  
4 about wanting to have a 9-to-5 job. He speaks about wanting no  
5 problems in the street. And I think in a lot of the evidence  
6 that we've received it shows that.

7 The other point, your Honor, on how this is different  
8 from Mr. Smith's first presentment is the new proposed bail  
9 condition with 24/7 -- putting a monitor in the defendant's  
10 house. This defendant now is also proposing audio. This  
11 system would be provided to Pretrial Services. Pretrial  
12 Services would have the sole access to view Mr. Smith. And I  
13 think some of the government's arguments that Mr. Smith is  
14 going to intimidate witnesses or threaten witnesses doesn't  
15 change just because Mr. Smith is out.

16 THE COURT: Well, I think their argument all along has  
17 been—but I'll hear from them obviously in a minute, but just  
18 to get your response—that he was, in effect, the guy playing  
19 the top role, directing what was going on. And that, they  
20 would argue, is reasonably inferrable as still going on, even  
21 though the intimidation of witnesses that they believe is going  
22 on is not being performed by him personally, but by others, but  
23 that it's a function of his role.

24 So what about that?

25 MR. VITALIANO: Judge, as to the intimidation of

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1 witnesses, I don't believe any witnesses in this case have been  
2 intimidated. The messages to any witnesses in this case were  
3 messages that were asking for character letters on behalf of  
4 Jatiek Smith. Jatiek Smith has never threatened a witness.  
5 And there are some recordings where the witnesses themselves  
6 come to Mr. Smith and let them know. Mr. Smith never once  
7 intimidated any witness, your Honor.

8 THE COURT: Let me hear from the government.

9 MR. HOBSON: Your Honor, that's simply not true. I  
10 don't want to repeat everything I've said at prior bail  
11 hearings and in our letter, but what's changed since our last  
12 bail argument is that we've been meeting with witnesses, and  
13 our evidence against Mr. Smith and our evidence of his threats  
14 and the terror he imposed on his victims in the industry has  
15 gotten much stronger, if anything. Our witnesses, as I've said  
16 to the Court before, are terrified. We are meeting with grown  
17 men who are sobbing in our office about the prospect of  
18 testifying against Mr. Smith because of the years of threats  
19 and violence that he imposed on this community.

20 We provided the Court with an excerpt of some of the  
21 recordings. We provided a broader excerpt here because defense  
22 said we didn't provide enough context. He says, I'll kill your  
23 kids, I'll kill one of your kids just to send a message, to  
24 send a message. And we know that there are events where he's  
25 doing this with guns. We know that he and his crew held a gun

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1 to a witness's chest and chased that witness. We submitted our  
2 enterprise letter today to the defendant to apprise him of some  
3 of the specific assaults we'll be proceeding on. I think I  
4 counted at least 12 specific threats of assaults that he's  
5 involved with that we'll be presenting evidence on at trial. I  
6 can't stress how dangerous he was, how scary he was to his  
7 victims.

8 I was just looking at the Pretrial Services' report.  
9 It reported a million dollars of assets that he has despite  
10 only being out of jail for a couple of years. We submit that  
11 is evidence of how strong his extortion scheme was and how  
12 scared all of these victims were that they were paying him this  
13 kind of money over this kind of time.

14 Since his arrest, witnesses have been reached out to  
15 by members of his family. And I appreciate that Mr. Vitaliano  
16 is trying to put a spin on that, but when you are a victim of  
17 threats and extortions and you are being asked to testify  
18 against this individual and you're getting demands from his  
19 family members to provide character letters, that is an  
20 implicit threat, that is obstructing justice. He is charged  
21 with obstructing justice and witness retaliation as some of the  
22 racketeering elements in this case, so these are not abstract  
23 concerns. These are concerns we have articulated in the  
24 indictment. They're concerns we expect to prove at trial  
25 through multiple witnesses who—I cannot stress enough—are

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1 terrified and are rightfully terrified.

2 THE COURT: All right. Let me hear again from defense  
3 counsel.

4 MR. VITALIANO: Judge, on one of the points that the  
5 government made, "the kill your kids" comment was in response  
6 to a convicted murderer telling Mr. Smith, I know your mother's  
7 address. A lot of the violence they cite is a product --

8 THE COURT: I'm not sure why that is an excuse. In  
9 other words, what you're saying is, in effect, one guy says to  
10 him, I'll kill your mother, and he says, Well, before you do  
11 that, I'll kill your kids. Doesn't that just show they're both  
12 hopelessly violent?

13 MR. VITALIANO: I think it shows that he was defending  
14 himself. He wasn't threatening him because he wanted to harm  
15 him. What he said was to protect his family. And I think that  
16 cuts against his dangerousness.

17 I know the government speaks about all the witnesses  
18 and how terrified they are of Mr. Smith. If your Honor looked  
19 at Exhibit A, the violence in this industry was going on well  
20 before Mr. Smith got there. Carl Walsh, in one of those text  
21 messages that he receives, one of his employees says, Thank  
22 you, boss, but I'm too scared, I can no longer do this job. I  
23 think the government tried to make out that Mr. Smith was the  
24 one that took over the industry. I just don't think that's  
25 correct. And I think that with the new combinations of

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1 conditions that I have proposed, I think that would -- I think  
2 that would satisfy Pretrial and the Court.

3 THE COURT: All right. Well, thank you both for your  
4 helpful arguments. I'm going to leave the situation as  
5 previously set, the defendant will continue to be detained. I  
6 think, if anything, that the evidence of his potential danger  
7 to the community is even stronger than I thought it was at the  
8 time of his original detention.

9 I am grateful to defense counsel for bringing this  
10 before the Court. The door is always open for reconsideration  
11 of bail. I never say, Oh, this is the second time, or the  
12 third time, or the fourth time. You can always come, but I  
13 don't think the arguments and the evidence support release at  
14 this time. So that's my ruling.

15 (Adjourned)

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